

No. 11007

United States
Circuit Court of Appeals
For the Ninth Circuit.

UNITED STATES OF AMERICA,
Appellant,
vs.

MIGUEL MORACHIS, Owner and Claimant of
one Plymouth Truck, 1940 Pickup, Motor No.
T-105-2887, Model PT 105, Sr. 9209823,
Appellee.

SUPPLEMENTAL
Transcript of Record

Upon Appeal from the District Court of the United States
for the District of Arizona

FILED

JUN 3 - 1946

PAUL P. O'BRIEN,
CLERK

No. 11007

United States
Circuit Court of Appeals

For the Ninth Circuit.

UNITED STATES OF AMERICA,
Appellant,
vs.

MIGUEL MORACHIS, Owner and Claimant of
one Plymouth Truck, 1940 Pickup, Motor No.
T-105-2887, Model PT 105, Sr. 9209823,
Appellee.

SUPPLEMENTAL
Transcript of Record

Upon Appeal from the District Court of the United States
for the District of Arizona

INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	PAGE
Affidavit for Warrant of Detention of Seized Property	21
Attachment and Monition with Marshal's Return	28
Certificate of Clerk to Supplemental Record..	35
Designation as to Supplemental Record.....	34
Docket Entries of June 7, 1944.....	24
Information of Libel	24
Minute Entry of June 7, 1944	23
Warrant for Detention of Seized Property....	36

In the District Court of the United States
for the District of Arizona

No. Civil—245—Tucson

UNITED STATES OF AMERICA,

Libelant,

vs.

7 boxes lemons, 307 lbs. gross; 2 boxes grapefruit,
92 lbs. gross; 10 cases canned milk, 48 cans ea.;
14½ oz. net weight each, “Pet” and “Carna-
tion” brands, and one truck, 1940 Pickup, Mo-
tor No. T-105-2887, Plymouth Model PT 105,
Sr. 9209823,

Respondents.

AFFIDAVIT FOR WARRANT OF DETEN-
TION OF SEIZED PROPERTY

United States of America,
District of Arizona—ss.

William H. Shane, being first duly sworn, de-
poses and says: that he is a Customs Inspector sta-
tioned at Nogales, Arizona; that he was so engaged
on June 3, 1944; that since that day he has been
on duty in such official capacity at Nogales, Ari-
zona; that on June 3, 1944, Roberto Sanchez Cue-
vas and Alfredo Grijalva, truck drivers for Miguel
Morachis of Nogales, Arizona, arrived at the Cus-
toms Inspection Station and presented two export
declarations to support the exportation of three
crates, 210 pounds, celery, two boxes, 70 pounds,
sweet potatoes, twenty boxes, 540 pounds bread,

and ten boxes 480 pounds, of apples. A license from the Board of Economic Warfare was required for the apples, which they presented. Upon examination of the load of merchandise Inspector William H. Shane found that the boxes labeled apples contained grapefruit and lemons; further examination of the load disclosed that five of the twenty boxes labeled bread, contained canned milk, Carnation and Pet Brands. The truck drivers admitted that it was a deliberate attempt to smuggle the merchandise and that they had been so instructed by their immediate superior, Rodolfo Tapia Montano, shipping clerk and secretary for Miguel Morachis. Rodolfo Tapia Montano stated that they had endeavored to smuggle the fruit and canned milk because they had no license to export same; that on June 3, 1944, the truck, grapefruit, lemons, and the canned milk were seized, detained, and remain in the custody of the Collector of Customs, United States Customs District No. 26, Nogales, Arizona, because said merchandise was being exported in said truck in violation of the Export Control Regulations and as provided in Section 401, Title 22, U. S. C. A., pursuant to order of the Foreign Economic Administration, dated January

10, 1944, issued under the act of July 2, 1940, as amended June 30, 1942, 50 U. S. C. 701.

W. H. SHANE.

Subscribed and sworn to before me this 6th day of June, 1944.

[Seal] E. K. CUMMING,
United States Commissioner,
District of Arizona.

[Endorsed]: Filed Jun. 7, 1944.

In the United States District Court for the
District of Arizona

May, 1944, Term at Tucson

Minute Entry of Wednesday,

June 7, 1944

Honorable Albert M. Sames, United States District Judge, presiding.

[Title of Cause.]

It Is Ordered that a warrant for the detention of the seized property issue.

[Title of District Court and Cause.]

EXCERPT OF DOCKET ENTRIES

1944

- June 7. File affidavit for warrant of detention of seized property.
 June 7. Order Warrant of detention issue.
 June 7. Issue warrant of detention.
-

[Title of District Court and Cause.]

INFORMATION OF LIBEL

(For the forfeiture and condemnation of goods sought to be exported in viol. 50 USC 701, USA a party, Federal question.)

To the Honorable Albert M. Sames, Judge of the Said Court:

Now comes the United States of America by Assistant United States Attorney John P. Dougherty, its attorney, and alleges on information and belief as follows:

I.

That on or about the 3rd day of June, 1944, at the Port of Nogales, Arizona, 7 boxes Lemons, 307 lbs. gross; 2 boxes Grapefruit, 92 lbs. gross; 10 cases Canned Milk, 48 cans ea., 14½ oz. net weight each "Pet" and "Carnation" brands, and One Truck, 1940 Pickup, Motor No. T-105-2887, Plymouth Model PT105, Sr. 920923, were attempted to be exported or shipped from, or taken out of the United States of America in violation of law, and with the intention that said articles be exported, or

shipped from, or taken out of the United States of America, in violation of law.

II.

That the said articles were not manifested, and no export license for the said articles was presented to the Collector of Customs.

III.

The exportation of said articles are prohibited by the provisions of 50 USC 701, and Proclamations, Executive Orders and Regulations issued pursuant to said statute and supplements and amendments thereto.

IV.

No export license had been issued for the exportation of said articles although licenses for the exportation of the same are required by the aforesaid Statutes, Proclamations, Executive Orders and Regulations.

V.

That on or about the 3rd day of June, 1944, the Collector of Customs at Nogales, Arizona, pursuant to the authority of 22 USC 238 and 402, seized and detained the said articles and retained and still retains possession thereof for further disposition as may be provided by law.

VI.

That thereafter, with due diligence and on or about the 7th day of June, 1944, said collector of Customs applied to the Honorable Judge of the United States District Court for the District of Ari-

zona, under 22 USC 239 and 402, for a warrant to justify the further detention of such property; and on the 7th day of June, 1944, the said Judge, having been satisfied that the seizure was justified, issued his warrant accordingly, pursuant to the authority of 22 USC 239 and 402, and the said property has since been detained by said Collector for disposition according to law.

VII.

That more than thirty days have passed since the seizure of said articles, and no owner or claimant has filed a petition for restoration of the whole or any part thereof.

VIII.

That the Attorney General of the United States has directed the United States Attorney for this District to institute a libel proceeding in this Court against said articles, to forfeit and condemn said articles to the United States of America, pursuant to 22 USCA 241 and 404.

IX.

That by reason of the premises and the same being contrary to the form of the statute or statutes of the United States in such cases provided, and the Proclamations, Executive Orders and Regulations issued by authority of law, the said Articles became and are forfeited to the United States of America.

Wherefore, libelant prays that process in due form of law be issued to enforce said forfeiture and condemnation against the aforesaid articles citing

all persons having or claiming any interest in the said articles to appear upon the return day and show cause why the condemnation and forfeiture should not be decreed; and that the aforesaid articles be condemned and forfeited to the United States of America and be ordered disposed of as provided by law and that the libelant have such other and further relief in the premises as the Court shall deem just.

F. E. FLYNN,
United States Attorney.
JOHN P. DOUGHERTY,

Assistant U. S. Attorney, Attorney for Libelant,
412 Federal Building, Tucson, Arizona.

United States of America,
District of Arizona—ss.

John P. Dougherty, being first duly sworn, deposes and says that he is an Assistant United States Attorney for the District of Arizona; that he has read the foregoing libel of information and knows the contents thereof, and that he believes the same to be true in substance and in fact.

JOHN P. DOUGHERTY.

Subscribed and sworn to before me this 10th day of June, 1944.

[Seal] SHIRLEY M. YOUNG,
Deputy Clerk, U. S. District Court for the District
of Arizona.

[Endorsed]: Filed Jun. 10, 1944.

[Title of District Court and Cause.]

ATTACHMENT AND MONITION

The President of the United States of America, to
the Marshal of the District of Arizona, Greeting:

Whereas, an Information of Libel has been filed in the District Court of the United States for the District of Arizona, at Tucson, Arizona, on the 10th day of June, A. D. 1944, by F. E. Flynn, United States Attorney for the District of Arizona, on behalf of the United States against 7 Boxes Lemons, 307 lbs. gross; 2 Boxes Grapefruit, 92 lbs. gross; 10 Cases Canned Milk, 48 cans ea., 14½ oz. net weight each "Pet" and "Carnation" brands, and One Truck, 1940 Pickup, Motor No. T-105-2887, Plymouth Model PT105, SR. 9209823 for reasons and causes in said libel mentioned, and praying the usual process and monition of the said Court in that behalf to be made, and that all persons having or pretending to have any right, title or interest therein may be cited to appear and answer all and singular the matters in the said libel articulately propounded, and that this Court shall be pleased to propound, and that said property, hereinbefore particularly described, be proceeded against and attached and seized for condemnation, and for such other penalties as are mention in said libel.

You Are, Therefore, Commanded, to attach the said property and to detain the same in your custody until the further order of this Court respect-

ing the same, and to give notice of the time and place of said hearing, by giving the substance of such libel with the order of Court therein, setting forth the time and place for trial, to be inserted for one publication in some newspaper of general circulation, published at Nogales, in said District of Arizona. The said publication to be fourteen days prior to the date for hearing said libel, and to post notices thereof fourteen days prior to date of hearing, one at the west door on the south side of the United States Post Office and Court House in Tucson, and two thereof in two public places in the City of Tucson, Arizona, to all persons claiming the said property, or knowing or having anything to say why this Court should not proceed against the same, according to the prayer of said libel, and that they be and appear before said Court, to be holden in and for said District of Arizona, at the United States Court House, in the City of Tucson, in the said District of Arizona, on Monday, the 10th day of July, 1944, at the hour of 10:00 o'clock in the forenoon of that day, if that be a day of jurisdiction, and then and there to interpose a claim to the same, and to make their allegations in that behalf.

And of what you shall have done in the premises do you then and there make return, together with this writ.

Witness the Honorable Albert M. Sames, Judge of the said Court and the seal thereof, this 10th day of June, A. D. 1944.

EDWARD W. SCRUGGS,
Clerk District Court of the United States for the
District of Arizona.

By JEAN E. MICHAEL,
Deputy Clerk.

United States of America,
District of Arizona—ss.

Marshal's Return

Civil-245-Tucson

I, B. J. McKinney, United States Marshal for the District of Arizona, hereby certify and return that I executed the within writ of Attachment and Monition by seizing on June 12, 1944, at Nogales, Arizona, 7 boxes Lemons, 307 Lbs. gross; 2 boxes grapefruit, 92 Lbs. gross; and 5 cases canned milk of 48 14½ Oz. cans each, three labeled, "Pet" and two labeled "Carnation" at the Customs Service storeroom; and at the same time and place I handed a copy of the within writ, with a copy of Libel attached, to Alfred J. Taylor, Deputy Collector of Customs; and on the same day I stored the aforementioned fruit at the Citizens Utilities Company, Nogales, Arizona, and the canned milk at the Santa Cruz County Sheriff's Office, Nogales, Arizona; and on the same day at the Post Office Service Station, Nogales, Arizona, I seized One 1940 Plymouth Pick-

up Truck, Motor No. T-105-2887, Model PT 105 Serial No. 9209823; and I stored said automobile at the place where seized; and on June 19, 1944, at Tucson, Arizona, I posted Notice of Hearing on bulletin boards in three public places, to wit: U. S. Court House, Pima County Court House, and Tucson City Hall; and on June 23, 1944, I caused said Notice to be published in the Nogales International, a weekly newspaper of general circulation published in Nogales, Arizona; and attached hereto and made a part hereof is the publisher's Affidavit of Publication.

Signed and dated this 13th day of July, 1944, at Tucson, Arizona.

B. J. McKINNEY,
United States Marshal

By HAROLD BROOKS ROGERS,
Deputy U. S. Marshal.

Marshal's constructive earnings	\$4.12
Drayage expense	1.00
Publication expense	8.25

AFFIDAVIT OF PUBLICATION

State of Arizona,
County of Santa Cruz—ss.

Before me, J. Figueras, a Notary Public in and for the County of Santa Cruz, duly commissioned and sworn, on this day personally appeared Craig Pottinger, who being first duly sworn, deposes and says: That he is the Publisher of 'The Nogales In-

ternational, a paper published at Nogales, Santa Cruz County, State of Arizona, and that the annexed notice or advertisement was published in said newspaper one time the publication being on June 23, 1944.

CRAIG POTTINGER

Subscribed and sworn to before me, at Nogales, Arizona, this 8th day of July, 1944.

[Seal]

J. FIGUERAS,

Notary Public

My Commission Expires 2/23/47.

LEGAL NOTICE

Notice of hearing. No. Civil-245-Tucson. In the District Court of the United States for the District of Arizona. United States of America, Libelant, vs. 7 Boxes Lemons, 307 lbs. gross; 2 Boxes Grapefruit, 92 lbs. gross; 10 Cases Canned Milk, 48 cans ea., 14½ oz. net weight each "Pet" and "Carnation" brands, and One Truck, 1940 Pickup, Motor No. T-105-2887, Plymouth Model PT105, Sr. 9209823, Respondents. Notice is hereby given that on the 10th day of June, A. D. 1944, F. E. Flynn, United States Attorney for the District of Arizona, filed in the above-entitled court an Information of Libel on behalf of the United States of America against the respondents named in the title hereof, which were then and there intended to be exported, in violation of 22 USC 401, into the Republic of Mexico from the Port of Nogales, Arizona by Miguel Morachis, and on the filing of said Informa-

tion of Libel the Court, on the 10th day of June, A. D. 1944, duly ordered the issuance of an Attachment and Monition against the above-named respondents, and the said described articles have by the United States Marshal been duly levied upon and seized by virtue of said monition and order of attachment, and which order of said Court fixed the 26th day of June, 1944, at the hour of 10:00 o'clock in the forenoon of said day as the day for hearing said petition and any and all persons who might appear in said cause, and which order of said Court directed that notice of hearing on said Information be given by one publication in a newspaper of general circulation and printed and published at Nogales, in said District of Arizona, the said publication to be fourteen days prior to the date for hearing said libel, and to post notice thereof fourteen days prior to the date of hearing, one at the west door on the south side of the United States Post Office and Court House in Tucson, and two thereof in the City of Tucson, Arizona. Now, Therefore, Notice Is Hereby Given that pursuant to an Order of the Court made and entered in the above-entitled Court in the above-entitled cause, the hearing on the Information of Libel in the above-entitled matter will be had before the Court at the Federal Courtroom in said Court in the City of Tucson, Arizona, on the 10th day of July, 1944, at the hour of 10:00 o'clock A. M. of said date, or upon any subsequent date of said Court to which the hearing may be continued, at which time all persons interested are notified to appear and show

cause, if any they have, why the prayer of said Information should not be allowed and why the Court should not pronounce against said articles hereinabove described and declare the same forfeited to the United States Government and delivered to the proper officers of the United States Government for the use and benefit of said Government as provided by law, and at which time any and all persons having any interest in and claim to said articles may present to said Court any and all such claims and any and all reasons that they may have why said articles should not be forfeited as prayed for in said Information. Dated this 10th day of June, 1944. B. J. McKinney, United States Marshal.

[Endorsed]: Filed July 13, 1944.

[Title of District Court and Cause.]

DESIGNATION AS TO SUPPLEMENTAL
RECORD

It appearing that there have been omitted certain parts of the transcript of record of this action on appeal, and counsel having stipulated thereto, the Clerk of the above entitled court is hereby directed to certify to the Clerk of the Circuit Court of Appeals for the Ninth Circuit, the following additional portions of said record:

1. Minute Entry of June 7, 1944;
2. All docket entries of June 7, 1944;

3. Affidavit for Warrant of Detention of Seized Property, filed June 7, 1944;
4. Information of Libel, filed June 10, 1944;
5. Attachment and Monition with Marshal's return thereon, filed July 13, 1944;
6. This Designation.

JOHN P. DOUGHERTY,
Assistant U. S. Attorney, At-
torney for Libelant-Appel-
lant.

[Endorsed]: Filed Sept. 12, 1945.

[Title of District Court and Cause.]

CLERK'S CERTIFICATE TO
SUPPLEMENTAL TRANSCRIPT OF RECORD

United States of America,
District of Arizona—ss.

I, Edward W. Scruggs, Clerk of the United States District Court for the District of Arizona, do hereby certify that I am the custodian of the records, papers and files of the said Court, including the records, papers and files in the case of United States of America, Libelant, versus 7 Boxes Lemons, et al, Respondents, numbered Civil-245-Tucson, on the docket of said Court.

I further certify that the attached pages, numbered 1 to 14, inclusive, contain a full, true and correct transcript of the proceedings of said cause and all the papers filed therein, together with the

endorsements of filing thereon, called for and designated in the Designation as To Supplemental Record filed in said cause and made a part of the supplemental transcript attached hereto, as the same appear from the originals of record and on file in my office as such Clerk, in the City of Tucson, State and District aforesaid.

I further certify that the Clerk's fee for preparing and certifying to this said supplemental transcript of record amounts to the sum of \$6.15, and that a memorandum of said sum has been entered in said cause by me for services rendered on behalf of the United States.

Witness my hand and the Seal of the said Court this 12th day of September, 1945.

[Seal] EDWARD W. SCRUGGS,
Clerk

[Title of District Court and Cause.]

WARRANT FOR DETENTION OF
SEIZED PROPERTY

Whereas, an Affidavit having been filed alleging that the above-named articles in the title hereof were seized by William H. Shane, Customs Inspector at Nogales, Arizona, and that said articles were being, and intended to be exported, shipped from and taken out of the United States of America and into the Republic of Mexico in violation of law, and without obtaining the necessary license to export the same, and

Whereas, a motion has been made by the United States District Attorney for the District of Arizona for the issuance of a warrant upon said Affidavit,

Now, Therefore, I, Albert M. Sames, Judge of the District Court of the United States for the District of Arizona, by this my warrant, authorize and empower that said articles above-described be detained by said seizing officer until the President of the United States orders the same to be restored to the owner or claimant, or until the same are discharged in due course of law on petition of the claimant or on trial of condemnation proceedings as provided in 22 USCA 401-408.

Given under my hand this 7th day of June, 1944.

(Signed) ALBERT M. SAMES

Judge, U. S. District Court
for The District of Arizona

I certify that this a true, exact, and correct copy of an original Warrant for Detention of Seized Property on file in the office of the Collector of Customs, Customs Collection District of Arizona, Nogales, Arizona.

ALFRED G. KIBBE,

Deputy Collector of Customs

Subscribed and sworn to before me by Alfred G. Kibbe at Nogales, Arizona, on September 25, 1945.

[Seal]

H. R. CHATHAM,

Assistant Collector of Customs

[Endorsed: No. 11007. United States Circuit Court of Appeals for the Ninth Circuit. United States of America, Appellant, vs. Miguel Morachis, Owner and Claimant of one Plymouth Truck, 1940 Pickup, Motor No. T-105-2887, Model PT 105, Sr. 9209823, Appellee. Supplemental Transcript of Record. Upon Appeal from the District Court of the United States for the District of Arizona.

Filed September 19, 1945.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.